

# Testimony By Jennifer Hensley

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Protection and Advocacy System, Inc

## Protection and Advocacy

System is a private, non-profit organization founded in New Mexico in 1979. The agency's mission is to protect, promote and expand the civil and legal rights of persons with disabilities. Protection and Advocacy System is the designated protection and advocacy program for the state of New Mexico pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and other federal statutes. Under the provisions of the Help America Vote Act, Protection and Advocacy System receives a small grant from the Administration on Developmental Disabilities in the Department of Health and Human Services to assist voters and registrants with disabilities to exercise and protect their right to vote. Protection and Advocacy System's testimony is based on its general experience in representing thousands of individuals with disabilities over the past 26 years as well as experience over the past few years in dealing specifically with the provisions of HAVA as well as state election law.

We appreciate the opportunity to provide testimony at the Committee's Field Hearing in Las Cruces.

It is our understanding that the purpose of the hearing is to consider the implications of proposed legislation that would require documentation of citizenship and photo ID in order to register and vote in federal elections. Protection and Advocacy System believes that such provisions, if enacted, would have a detrimental impact on persons with disabilities and other vulnerable populations and would limit the participation of eligible voters in state as well as federal elections.

## Citizenship Documentation

We are not aware of any evidence or even anecdotal information that persons who are not American citizens have been voting in federal elections in New Mexico. Our staff have worked with county clerks throughout the state as well as the Secretary of State in our HAVA-related activities and we have not heard concerns in this area from them. It has been our experience that undocumented individuals are very reluctant to bring attention to themselves or risk exposure of their status as would be the case in registering and voting in elections.

Although we concede that there may be the occasional anomalous case of which we are unaware, we believe that the incremental benefit of attempting to assure the citizenship of all voters through a documentation requirement would be far outweighed by the very likely reduction in participation in the registration and voting process of Americans who are fully qualified and eligible to vote and who currently cast ballots in our elections.

The simple fact is that many U.S. citizens do not currently possess a U.S. passport or an original or certified copy of a birth certificate. They may never have obtained one themselves or from their parents, or they may have been lost or destroyed through the years. It is not unusual for this to be the case with adults with disabilities, especially those who have been in residential placements other than their family homes.

Requiring individuals to present such documentation in order to register for the first time or to maintain their current registration will impose a significant hardship in both time and money to the large number of persons with a disability who are on fixed incomes or otherwise low income. Passports cost nearly \$100 and take considerable time to apply for and receive. There is a \$10 fee to obtain a certified copy of a New Mexico birth certificate. Since many residents of this state were born elsewhere, they would face the fees charged by the state of their birth as well as the task of sorting out how and where to apply. Imposing a registration process that requires a citizen to pay a fee would have the same effect as a poll tax, a practice from America's past that has been soundly and appropriately rejected by modern society.

Moreover, in a poor low-income state like New Mexico, some citizens - for example, some elderly disabled people - were born in remote rural areas and there is no readily accessible documentation of their birth. A significant percentage of such persons are Hispanic or Native American. Documentation requirements have the potential of completely disenfranchising such citizens.

We bring to the Committee's attention that in the Deficit Reduction Act of 2005, Congress imposed a citizenship documentation requirement for Medicaid eligibility. Similar dire consequences were widely predicted, much of which will be averted only because the Center for Medicare and Medicaid Services recognized these likely consequences and provided an exemption from the requirement for all persons who receive Medicaid based on their disability (as reflected in their receipt of Supplemental Security Income benefits) and for all persons who are eligible for both Medicaid and Medicare (typically very low income persons who are either elderly or disabled). No such exemption was provided for in the statute but we appreciate CMS's acknowledgement of the problem and we encourage the Committee to recognize it as well.

Finally, we note that requiring passports or birth certificates in order to register to vote will effectively end the practice of voter registration drives. Since virtually no one carries such documents on their person on a routine basis, the opportunity to register to vote at booths in public places such as grocery stores, shopping malls, and other popular locations will become a thing of the past. Moreover, it will severely limit the effectiveness of the voter registration processes established under the federal "Motor Voter" Act, which requires that state agencies such as Motor Vehicle agencies offer voter registration at the time of renewing driver's licenses or automobile registrations - processes that generally do not require proof of citizenship. Discouraging registration of eligible voters may not be the intent of the sponsor of the legislation being considered but it is clearly one of the predictable outcomes.

## Voter Identification

### The Help America

Vote Act - HAVA - already requires that first-time voter registrants present some form of identification. In addition, New Mexico has a newly adopted voter identification law that requires individuals to present some form of ID at polling places in order to vote. At the time that this law was passed, there were only a few anecdotes suggesting that there were actual cases in which someone had impersonated a registered voter in order to cast a ballot in his or her place.

Fortunately, these laws provide significant flexibility in terms of the nature of the required identification, and specifically do not require photo identification. This flexibility in documentation is important because many adults with disabilities do not have driver's licenses and some also lack other photo ID. Nearly all of these adults are either current voters or are eligible to register and vote. Imposing a requirement for photo ID at polling places will create many of the same problems and impediments to legitimate voting as noted above.

The Federal Elections Commission noted in its 1997 report to Congress that photo identification entails major expenses, both initially and in maintenance, and presents an undue and potentially discriminatory burden on citizens in exercising their basic right to vote. Most in persons with disabilities are on set incomes and cannot afford the extra expense to acquire or maintain the required documentation.

## Conclusion

A relatively low percentage of American citizens eligible to vote actually register to vote, and a relatively low percentage of registered voters actually cast ballots in the most recent federal election. We believe that Congress should be making it easier, rather than harder, to participate in elections.

More specifically, we bring to the Committee's attention that persons with disabilities already face barriers to participating in the electoral process, such as polling places that have not been accessible, voting machines that are not accessible, or other barriers such as a lack of accessible public transportation. While HAVA is improving this situation, we believe that Congress should be eliminating these and other barriers and not creating new ones such as citizenship documentation and photo ID requirements that will leave some of these citizens behind.

Finally, we encourage the Committee not to assume that all Americans lead the same lives as Congressmen or even our friends and neighbors. The fact that most of us have driver's licenses and some of us have passports does not mean that all American citizens have such documents or ready access to them. All American citizens have the right to vote, regardless of how they lead their lives and whether they have such documents, and that right should not be limited through laws based on faulty assumptions.